

# The Caribbean

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This chapter reviews legal developments in 2006 that are pertinent to and affect the English-speaking Caribbean as a region.

## I. Regional Cooperation and Integration

### A. THE CARIBBEAN TREATY ON MUTUAL LEGAL ASSISTANCE IN SERIOUS CRIMINAL MATTERS

On December 13, 2005, Trinidad & Tobago became the first member state of the Caribbean Community and Common Market (CARICOM)<sup>1</sup> to ratify the Caribbean Treaty on Mutual Legal Assistance in Serious Criminal Matters (the Treaty), a Caribbean Single Market and Economy (CSME)<sup>2</sup> instrument signed on July 6, 2005.<sup>3</sup> To date, the Treaty has attracted nine signatories.<sup>4</sup> The Treaty's entry into force is contingent on ratification

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1. The regional grouping of the Caribbean Community and Common Market, established under the Treaty of Chaguaramas, dated July 4, 1973, came into being on August 1, 1973, and is comprised of Antigua & Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines, Suriname, and Trinidad & Tobago. See Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy, art. III(1), July 4, 1973 [hereinafter Revised Treaty of Chaguaramas], available at <http://www.sice.oas.org/trade/caricom/caricind.asp>.

2. See Lillian Crawford-Abbensetts & Andrea Ewart, *International Legal Developments in Review: 2005: The Caribbean*, 40 INT'L LAW 541, 542-44 (2006); see also Lillian Crawford-Abbensetts et al., *International Legal Developments in Review: 2004: The Caribbean*, 39 INT'L LAW 591, 592-94 (2005).

3. See Caribbean Treaty on Mutual Legal Assistance in Serious Criminal Matters, July 6, 2005, available at <http://www.caricomlaw.org/docs/MLAT.pdf>.

4. Signatories include Antigua & Barbuda, Barbados, Belize, Guyana, Jamaica, St. Kitts & Nevis, St. Lucia, Suriname, and Trinidad & Tobago. For a table listing the signatories see Caribbean Community Secretariat, Status of Acceptance and Incorporation of CSME-Related Legal Instruments (2006), available at <http://www.caricomlaw.org/docs/CSME%20Legal%20Instruments%20-%20With%20hyperlinks.doc>.

by five states.<sup>5</sup> The purpose of the Treaty is to increase cooperation in mutual legal assistance among Caribbean countries with respect to serious criminal matters and to combat criminal activity.<sup>6</sup> Signatories to the Treaty will afford each other the widest measures of mutual legal assistance under their laws at any stage of investigations, prosecutions, and judicial proceedings in relation to serious crimes.<sup>7</sup>

Under the Treaty, countries will be allowed to provide assistance in: identifying and locating persons and objects; taking evidence or statements from persons; obtaining the production of judicial or other documents; examining objects, sites, and premises; providing any available information, relevant exhibits, originals or certified copies of documents and records; and facilitating the personal appearances of witnesses.<sup>8</sup> In addition, the mutual legal assistance contemplated under the Treaty includes: effecting a temporary transfer of persons in custody to appear as witnesses; executing searches and seizures; tracing, seizing, freezing, and confiscating the proceeds or instrumentalities of crime; and facilitating the personal appearances of witnesses.<sup>9</sup>

Requests for legal assistance are to be made in writing, except in urgent circumstances when they may be made orally,<sup>10</sup> through the designated central authorities of the State Parties, which will have the responsibility and power to execute requests for legal assistance or to transmit them to the competent authorities for execution.<sup>11</sup> Requests for assistance may be refused if, *inter alia*, the execution would be contrary to the laws of the requested State, unreasonable, or would impair the sovereignty, security, public order, essential public interest, or personal safety.<sup>12</sup> The costs for legal assistance will be borne by the requesting state.<sup>13</sup> Neither extradition nor the arrest and detention with a view to extradition are authorized under the provisions to the Treaty.<sup>14</sup>

## B. OECS ECONOMIC UNION TREATY

From June 21 through 23, 2006, the Organization of the Eastern Caribbean States (OECS)<sup>15</sup> held its forty-third meeting and marked its twenty-fifth anniversary on the island of St. Kitts. At the meeting, member states signed a historic Declaration of Intent to form an economic union and unveiled a draft of the new Economic Union Treaty to guide the process.<sup>16</sup> The Economic Union Treaty is expected to be signed by the Heads of State

5. Caribbean Treaty on Mutual Legal Assistance in Serious Criminal Matters, *supra* note 3, art. 28.

6. *Id.* at art. 2.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* at art. 5.

11. *Id.* at art. 4.

12. *Id.* at art. 7.

13. *Id.* at art. 10.

14. *Id.* at art. 22.

15. The OECS is a sub-regional grouping within CARICOM comprised of the following full and associate member states: Antigua & Barbuda, Dominica, Grenada, Montserrat, St. Kitts & Nevis, St. Lucia, and St. Vincent & the Grenadines as full members, and Anguilla and the British Virgin Islands as associate members.

16. See OECS, Communique, 43rd Meeting of the OECS Authority 21-23 June 2006, available at [http://www.oecs.org/Documents/communiqués\\_meetings/43rd\\_authmeeting\\_communique.pdf](http://www.oecs.org/Documents/communiqués_meetings/43rd_authmeeting_communique.pdf); News Release, OECS Leaders Sign Declaration of Intent to Form Economic Union (June 22, 2006), available at [http://www.caricom.org/jsp/oecs\\_news/oecs\\_new\\_treaty.jsp](http://www.caricom.org/jsp/oecs_news/oecs_new_treaty.jsp).

on July 1, 2007, following a yearlong public consultative process and subsequent ratification by the OECS.<sup>17</sup> The Declaration of Intent acknowledges the CSME integration process and seeks to add value to that process rather than running counter to it.<sup>18</sup> The Economic Union Treaty will replace the Treaty of Basseterre, which established the OECS on June 18, 1981.<sup>19</sup> The historic meeting also unfurled the first ever OECS flag in the compound of the Eastern Caribbean Central Bank.<sup>20</sup>

#### C. IMPLEMENTATION OF THE CARIBBEAN SINGLE MARKET & ECONOMY TREATY PROVISIONS

In 2006, the region continued its progress toward the creation of a CSME.<sup>21</sup> With regard to the trade components of the Revised Treaty of Chaguaramas,<sup>22</sup> the goal is to create free movement of trade in the areas of goods, services, people, and capital.<sup>23</sup> CSME members no longer impose tariffs on imports from other CSME member countries,<sup>24</sup> although some countries continue to impose discriminatory taxes primarily in the form of an environmental levy.<sup>25</sup> Guyana and Antigua & Barbuda impose a consumption tax.<sup>26</sup> Furthermore, to better facilitate the free movement of goods, work continues on creating harmonized standards through the establishment of the CARICOM Regional Organisation for Standards and Quality (CROSQ), which operates out of Barbados.<sup>27</sup> In the area of free movement of services, only Barbados, Jamaica, and Trinidad & Tobago already extend full benefits to each other.<sup>28</sup> The other countries are at various stages of implementation that are contingent upon introduction and implementation of the relevant legislation—for example, to allow the free movement of skilled persons and to establish accreditation bodies in support of issuance of skilled certificates to qualifying professionals.<sup>29</sup> All countries have an operational stock exchange, with the exception of Belize.<sup>30</sup> The eventual goal is to establish a regional stock exchange, which currently only includes Barbados, Jamaica, and Trinidad & Tobago.<sup>31</sup>

17. *Id.*

18. See generally Crawford-Abbensetts & Ewart, *supra* note 2.

19. See TREATY ESTABLISHING THE ORGANISATION OF EASTERN CARIBBEAN STATES, JUNE 18, 1981, 20 I.L.M. 1166, available at [http://www.oecs.org/Documents/treaties/oecs\\_treaty.pdf](http://www.oecs.org/Documents/treaties/oecs_treaty.pdf).

20. See OECS Communique, *supra* note 16.

21. See Crawford-Abbensetts & Ewart, *supra* note 2.

22. Revised Treaty of Chaguaramas, *supra* note 1.

23. See Crawford-Abbensetts & Ewart, *supra* note 2, at 542.

24. *Id.* at 543; CARICOM Secretariat, Status of Implementation of the CARICOM Single Market and Economy: Presentation at the Caribbean Annual Private Sector Meeting, June 10, 2006, Bridgetown, Barbados [hereinafter CSME Status of Implementation], available at [http://www.caricom.org/jsp/single\\_market/csme\\_implementation.jsp](http://www.caricom.org/jsp/single_market/csme_implementation.jsp).

25. Examples are Barbados, Belize, Guyana, and St. Lucia. For a chart detailing the progress of CSME implementation, see CARICOM, Establishment of the CARICOM Single Market and Economy: Summary of Status of Key Elements [hereinafter CSME Summary], [http://www.caricom.org/jsp/single\\_market/csme\\_summary\\_key\\_elements\\_jun\\_06.pdf](http://www.caricom.org/jsp/single_market/csme_summary_key_elements_jun_06.pdf).

26. *Id.*

27. CSME Status of Implementation, *supra* note 24.

28. Crawford-Abbensetts & Ewart, *supra* note 2, at 542.

29. CSME Summary, *supra* note 25.

30. *Id.*

31. *Id.*

As of the end of 2006, the following legislative and regulatory patterns had emerged in the region:

- Eleven states (Antigua and Barbuda not included) have implemented legislation and a regulatory framework allowing free entry and movement of university graduates.<sup>32</sup> The legislative and regulatory framework for free movement of other skilled personnel (artistes, musicians, media personnel, and sports persons) and self-employed workers is in various stages of implementation.<sup>33</sup>
- To facilitate the commitment to ease travel by all CARICOM nationals, member states have agreed to develop a common machine-readable passport for regional travel.<sup>34</sup> Five countries (Antigua & Barbuda, Dominica, Suriname, St. Vincent & the Grenadines, and St. Kitts & Nevis) have already introduced a CARICOM passport.<sup>35</sup> Regional immigration and customs officials have also agreed on the core elements of a CARICOM entry/departure form, which is to be implemented by all members. OECS states accept photo IDs from other OECS nationals.<sup>36</sup>
- Work continues on establishing a regional accreditation unit to manage the development of mechanisms for certifying and establishing equivalency of degrees and certificates.<sup>37</sup> Jamaica and Trinidad & Tobago have established a national accreditation body, and partially-functioning entities exist in Barbados, Guyana, and St. Kitts & Nevis.<sup>38</sup> Other states are at various stages of forming their own national accreditation bodies.<sup>39</sup>
- Countries have begun to establish systems to track and arrange for the transfer of social security benefits to follow the employee.<sup>40</sup> Barbados, Dominica, Guyana, St. Kitts & Nevis, and Trinidad & Tobago report that they have already begun processing social security benefit claims from nonresidents.<sup>41</sup>
- Eleven states (Suriname and Montserrat not included) have signed and ratified the Intra-Regional Double Taxation Agreement.<sup>42</sup> This has already been implemented as national law by Antigua & Barbuda, Barbados, Belize, Dominica, Guyana, Jamaica, St. Lucia, St. Vincent & the Grenadines, and Trinidad & Tobago.<sup>43</sup>
- Finally, work continues on the preparation of and adaptation into national law of various pieces of legislation, most noticeably on consumer protection, competition, financial institutions, and accreditation.<sup>44</sup>

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32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

## II. Dispute Settlement

### A. BARBADOS v. TRINIDAD & TOBAGO MARITIME DELIMITATION ARBITRATION

On February 16, 2004, Barbados initiated arbitration proceedings against the Republic of Trinidad & Tobago pursuant to Article 286 and Annex VII of the 1982 U.N. Convention on the Law of the Sea (the Convention or UNCLOS).<sup>45</sup> Barbados claimed a single maritime boundary line, delimiting the exclusive economic zone (EEZ) and the continental shelf between it and Trinidad & Tobago as provided under Articles 74 and 83 of UNCLOS.<sup>46</sup>

The Award issued by the Tribunal includes a finding as to the Tribunal's jurisdiction to consider the Parties' delimitation claims and an analysis of the case on the merits that culminated in establishing a single maritime boundary between Barbados and Trinidad & Tobago that differs from the boundaries claimed by each of the Parties in their submissions to the Tribunal. The Tribunal found that it had "jurisdiction to delimit, by the drawing of a single maritime boundary, the continental shelf and EEZ appertaining to each of the Parties in the waters where their claims to these maritime zones overlap."<sup>47</sup> Additionally, the Tribunal clarified that while it had jurisdiction to consider the possible impact of Barbadian fishing activity in waters affected by the delimitation on a prospective maritime boundary, "to render a substantive decision as to an appropriate fisheries regime to apply in waters which may be determined to form part of Trinidad and Tobago's EEZ" was outside its jurisdiction.<sup>48</sup>

The Tribunal utilized the equidistance/relevant circumstances principle<sup>49</sup> to determine the single maritime boundary between the two States in three segments: west, central, and east.<sup>50</sup> As a practical matter, this approach entails determining a provisional line of equidistance as a starting point then examining the provisional line in light of relevant circumstances, which are case specific, to determine whether it is necessary to adjust the provisional line in order to achieve an equitable result.<sup>51</sup>

Barbados argued that the provisional delimitation line to the west should be subject to a major adjustment based on, *inter alia*, Barbadian fisherfolk's historical fishing rights and dependence on access to that fishery for their livelihoods.<sup>52</sup> The Tribunal found that Barbados failed to prove any of the factual circumstances that Barbados had invoked and, therefore, did not have to decide whether the circumstances were of the requisite character to result in an adjustment to the provisional delimitation line.<sup>53</sup> Thus, the Tribunal

45. Barbados v. Trin. & Tobago, Arbitral Tribunal, ¶ 1 (2006), available at <http://www.pca-cpa.org/ENGLISH/RPC/BATRI/Award%20final%20110406.pdf>.

46. *Id.* ¶ 58.

47. *Id.* ¶ 217 (i).

48. *Id.* ¶¶ 215, 217(iii).

49. See Cameroon v. Nigeria, 2002 I.C.J. 94, ¶ 288 (Oct. 10); Qatar v. Bahrain, 2001 I.C.J. 87, ¶ 230 (Mar. 16).

50. Barbados, *supra* note 45, ¶ 242.

51. *Id.*

52. *Id.* ¶ 251.

53. *Id.* ¶¶ 266-271.

concluded that the equidistance line in the west shall be the line of delimitation between the two States.<sup>54</sup>

On the issue of fisheries, the Tribunal opined that Trinidad & Tobago assumed an obligation:

to negotiate in good faith an agreement with Barbados that would give Barbados access to fisheries within the EEZ of Trinidad and Tobago, subject to the limitations and conditions spelled out in that agreement and to the right and duty of Trinidad and Tobago to conserve and manage the living resources within its jurisdiction.<sup>55</sup>

The Tribunal pointedly referred to the observations of the tribunal in the *Lac Lanoux* arbitration<sup>56</sup> concerning the obligation of negotiating an agreement:

[T]he reality of the obligations thus undertaken is incontestable and sanctions can be applied in the event, for example, of an unjustified breaking off of the discussions, abnormal delays, disregard of the agreed procedures, systematic refusal to take into consideration adverse proposals or interests, and, more generally, in cases of the violation of the rules of good faith.<sup>57</sup>

In the central segment of the maritime boundary, some sixteen nautical miles in length, the Parties did not argue for an adjustment to the provisional equidistance line, and, thus, the equidistance line is what was agreed to in this segment.<sup>58</sup>

In the west, the Tribunal found that the existence of the significant coastal frontage of Trinidad & Tobago was a relevant circumstance that justified an adjustment of the equidistance line.<sup>59</sup> The Tribunal determined that there should be an adjustment of the provisional equidistance line northward, in effect a bending of the equidistance line in order to reflect a reasonable influence of the coastal frontages on the overall area of delimitation with a view to avoiding reciprocal encroachments that would otherwise result in some form of inequity.<sup>60</sup> The adjustment represents a significantly smaller deviation from the provisional equidistance line than that which was claimed by Trinidad & Tobago.

## B. WORLD TRADE ORGANIZATION – ANTIGUA V. THE UNITED STATES

In 2006, the World Trade Organization (WTO) matter brought by Antigua & Barbuda against the United States with respect to internet gambling, arrived at and struggled through the implementation phase of the case. *United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services*<sup>61</sup> is the only WTO case that has been initiated by a Caribbean nation.<sup>62</sup> The case began on March 13, 2003, when Antigua & Bar-

54. *Id.* ¶ 271.

55. *Id.* ¶ 292.

56. *Lac Lanoux Arbitration* (France v. Spain), 24 I.L.R. 101 (Arbitral Tribunal 1957).

57. *Barbados*, *supra* note 45, ¶ 89 n.28.

58. *Id.* ¶ 294.

59. *Id.* ¶ 372.

60. *Id.* ¶ 379.

61. Panel Report, *United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285 (Nov. 10, 2004).

62. Andrea Ewart, *The Caribbean and Other Developing Countries in the WTO Dispute Settlement Mechanism: A Procedural Approach to Special and Differential Treatment Through Reforms to Dispute Settlement*, at 1, (Oct.

buda requested consultations with the United States.<sup>63</sup> Antigua, which has legalized internet gambling, complained that several federal and state laws in the United States had imposed a total prohibition on the cross-border supply of gambling services and, therefore, were in violation of U.S. commitments under the General Agreement on Trade in Services (GATS) and that U.S. enforcement of these laws had damaged its domestic gambling industry.<sup>64</sup> The United States responded that it had excluded the gambling sector from its GATS commitments and, furthermore, that it was allowed to pass legislation banning gambling in order to protect public morals.<sup>65</sup> As the case made its way through the WTO process, the WTO panel and the Appellate Body found that the United States had not excluded the gambling sector from its GATS commitments.<sup>66</sup> However, the Appellate Body allowed the U.S. public morals defense, except with respect to horse racing because the U.S. Interstate Horse Racing Act of 2000 allows Americans to place bets on horseracing either by phone or online.<sup>67</sup> Antigua & Barbuda interpreted the WTO ruling to require that the United States amend its laws to allow Americans to also place horseracing bets originating in other countries, including via the internet. An arbitration ruling gave the United States until April 2006 to implement the WTO decision.<sup>68</sup>

On April 11, 2006, the United States issued an implementation report.<sup>69</sup> This report stated that on April 5, 2006, the U.S. Department of Justice had confirmed the position of the U.S. Government that the Interstate Horse Racing Act had not changed existing U.S. laws, which continued to prohibit the interstate transmission of bets or wagers, including wagers on horse races, and that, in fact, the Department was undertaking a civil investigation relating to a potential violation of law regarding this activity.<sup>70</sup> "In view of these circumstances," the report concluded, "the United States is in compliance with the recommendations and rulings of the DSB in this dispute."<sup>71</sup> On May 26, 2006, the parties filed with the DSB the Agreement between Antigua and Barbuda and the United States Regarding Procedures under DSU Articles 21 and 22.<sup>72</sup> The document requested establishment of a compliance panel and, in the event the panel agreed with Antigua, authorization for Antigua to seek suspension of concessions from the United States.<sup>73</sup>

Then, on October 2, 2006, the U.S. Congress passed the Internet Gambling Prohibition and Enforcement Act (H.R. 4411), which was tacked onto the end of the SAFE Port

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2006) (unpublished manuscript on file with the Caribbean Trade Network, Port of Spain, Trinidad & Tobago).

63. Panel Report, *supra* note 61, ¶ 1.2

64. *Id.*

65. *Id.*

66. *Id.*

67. Appellate Body Report, *United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R (Apr. 7, 2005).

68. Award of the Arbitrator, *United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, ¶ 33 WT/DSB/13 (Aug. 19, 2005).

69. Status Report, *United States—Measures Affecting the Cross-Border Supply of Gambling and Betting*, WT/DS285/15/Add.1 (Apr. 11, 2006).

70. *Id.*

71. *Id.*

72. Agreement between Antigua and Barbuda and the United States Regarding Procedures Under Articles 21 and 22 of the DSU, WT/DS285/16 (May 26, 2006), 2006 WL 1516948.

73. *Id.*

Act (H.R. 4954)<sup>74</sup> and signed into law by President Bush. The legislation criminalizes the use of credit card and other payments for gambling, except in the case of gambling activities permitted by the states and on Native American territory, and horseracing.<sup>75</sup> On its face, the legislation seems to exclude internet gambling and therefore to ignore the WTO ruling. However, the horseracing loophole remains the best hope for resolving this impasse through negotiated settlement, as it is clear that the small Antiguan economy would nevertheless be the loser if it attempted to impose sanctions against the United States.<sup>76</sup> This case is being watched very closely by the entire region for signals on the extent to which small, developing countries can effectively use and prevail during the WTO dispute settlement process.

### III. Trade Negotiations

#### A. CARIFORUM-EUROPEAN COMMUNITIES ECONOMIC PARTNERSHIP AGREEMENT

In 2006, CARICOM continued the third phase of negotiations with the European Union to create an Economic Partnership Agreement (EPA). The EPA is intended to replace the preferential programs built around the Lomé Agreements, under which the Caribbean and other former European colonies in Africa and the Asian-Pacific (African-Caribbean-Pacific or ACP countries) have been receiving preferential access into the European agricultural market in the form of duty-free and guaranteed quotas on a unilateral basis.<sup>77</sup> In response to WTO determinations that this preferential regime violated WTO rules,<sup>78</sup> in 2000 the EU and ACP countries launched negotiations to re-establish trade relations on a reciprocal basis by replacing the Lomé Convention with Economic Partnership Agreements (EPAs) within each region of the ACP.<sup>79</sup> The Caribbean Forum of ACP States (CARIFORUM) represents the Caribbean region.<sup>80</sup>

During this third phase of CARIFORUM-EU negotiations, the parties aim to consolidate the elements of previous discussions on a draft EPA agreement that already have addressed: (i) the structure of the EPA; (ii) priority issues for Caribbean regional integration; and (iii) an approach to trade liberalization.<sup>81</sup> The goal is to complete negotiations

74. Safe Port Act, 31 U.S.C.S. § 5361 (2006), available at <http://thomas.loc.gov/cgi-bin/query/D?c109:6:./temp/~c1095PwNJV>.

75. *Id.*

76. Antigua has floated the idea of denying patent protection for U.S. goods as a retaliatory measure. See Hiawatha Bray, *Could the Future of Internet Gambling in the US Lie in Antigua?*, THE BOSTON GLOBE, Mar. 30, 2006. However, as this move would undermine the trade system and its intellectual property rules, the proposal is unlikely to receive the sanction of the WTO/DSB, and if Antigua nevertheless pursued that option, it would then be in violation of its WTO commitments.

77. Jürgen Huber, *The Past, Present and Future ACP-EC Trade Regime and the WTO*, 11 EURO. J. INT'L L. 427, 427 (2000).

78. See, e.g., Appellate Body Report, *European Communities—Regime for the Importation, Sale and Distribution of Bananas*, WT/D527/AB/R (Sept. 9, 1997).

79. *Id.*

80. MELISSA JULIAN & DAVINA MAKHAN, EPA NEGOTIATIONS UPDATE, 5 TRADE NEGOTIATIONS INSIGHTS No. 5, at 7 (2006), available at [http://www.ictsd.org/tmi/tmi\\_english/TNI\\_EN\\_5-5.pdf](http://www.ictsd.org/tmi/tmi_english/TNI_EN_5-5.pdf).

81. European Commission, Plan and Schedule for CARIFORUM-EC Negotiation of an Economic Partnership Agreement, April 22, 2004, Brussels, available at [http://trade-info.cec.eu.int/doclib/docs/2004/april/tradoc\\_116912.pdf](http://trade-info.cec.eu.int/doclib/docs/2004/april/tradoc_116912.pdf).



by December 31, 2007.<sup>82</sup> This is also the required end-date set by the WTO for the phase-out of EU preferences for ACP countries.<sup>83</sup> In March 2006, the negotiators agreed to work on a draft text to be considered at the Third CARIFORUM-EU Ministerial meeting, scheduled for December 2006.<sup>84</sup>

#### B. CARICOM-CANADA FREE TRADE AREA NEGOTIATIONS

In 2006, Canada announced its intentions to fast-track the CARICOM-Canada free trade negotiations that have been faltering after being initiated in 2001.<sup>85</sup> The negotiated agreement would replace the Caribbean-Canada Trade Agreement (CARIBCAN), under which the Canadian government grants duty-free access to many of the region's exports on a unilateral basis.<sup>86</sup> While this program has not received the attention that has been directed at the EU program for the ACP, it nevertheless also requires a waiver from the WTO and, like the EU program, must be phased out by 2008.<sup>87</sup>

### IV. World Bank-Netherlands Partnership Program: Protecting Children Affected by AIDS in the Caribbean—Recommendations for Legal Reform in Guyana, Grenada, St. Lucia, and St. Vincent & the Grenadines

In 2006, as part of a broader research study financed by the World Bank-Netherlands Partnership Program, the Latin America and Caribbean Region's Human Development Unit and the Public Health and AIDS Legal Advisory services of the World Bank published a series of notes providing recommendations for legal reform to enhance the protection of children orphaned or made vulnerable by AIDS in the Caribbean.<sup>88</sup> These notes, while acknowledging some notable successes achieved in the Caribbean's efforts against HIV and AIDS, posited that the national legislative framework should be improved and institutional responses strengthened.<sup>89</sup> Priority legal and institutional reforms are particularly recommended to provide better protection against the impact of HIV and AIDS for orphans and vulnerable children. In particular, the notes recommended changes in the areas of:

82. *Id.*

83. See Huber, *supra* note 77, at 427.

84. Joint Statement of the Fifth Meeting of CARIFORUM-EU Principal Negotiators, Mar. 28, 2006, Bridgetown Barbados, [http://www.sice.oas.org/TPD/CAR\\_EU/CARIFORUM\\_EU\\_Joint\\_Statement\\_March\\_2006.pdf](http://www.sice.oas.org/TPD/CAR_EU/CARIFORUM_EU_Joint_Statement_March_2006.pdf).

85. Gordon French, *Implementing CARICOM-Canada Free Trade Area Crucial, says Canadian High Commissioner*, CARIBBEAN NET NEWS, Nov. 8, 2006, <http://www.caribbeanetnews.com/cgi-script/csArticles/articles/000041/004138.htm>.

86. *Id.*

87. Appellate Body Report, *supra* note 78.

88. JACQUELINE SEALEY-BURKE, WORLD BANK—NETHERLANDS PARTNERSHIP PROGRAM, PROTECTING CHILDREN AFFECTED BY AIDS IN THE CARIBBEAN: RECOMMENDATIONS FOR LEGAL REFORM IN GUYANA (2006).

89. For links to the various reform notes, visit the World Bank's website devoted to HIV/AIDS in Latin America and the Caribbean at <http://web.worldbank.org/WEBSITE/EXTERNAL/COUNTRIES/LACEXT/EXTLACREGTOPHEANUTPOP/EXTLACREGTOPHIVAIDS/0>.

- 1) Financial provision and support, including: (a) revision of Maintenance Acts to extend the eligibility for maintenance up to the age of eighteen, revision of the onerous requirements, especially in relation to establishment of paternity, removal of the absolute bar on recovery beyond sixteen weeks of default in payments, and the introduction of maintenance enforcement legislation, such as attachment of earnings; (b) enactment of reciprocal enforcement legislation; and (c) establishment of Family Courts.
- 2) Sexual exploitation and abuse, recommending, *inter alia*: (a) raising of the age of consent for sexual intercourse from fifteen years; (b) enactment of laws to address child pornography and reconsidering penalties for sexual offenders; (c) amendment of the Criminal Code/Law Act to extend the material element of incest, rape, and other sexual offences to sexual activities beyond actual sexual intercourse, as well as to provide equal protection to boys and girls from all forms of sexual abuse and exploitation; (d) enactment of legislation providing exclusively for the care and protection of abused children; (e) relaxation of the rules of evidence to create a more child friendly court environment and facilitate the prosecution of sex abuse cases involving young victims; (f) in Saint Lucia, reconsideration of the age at which persons can marry with parental consent; and (g) in Grenada, reconsideration of the honest belief defense for sexual intercourse with a child aged fourteen or fifteen.
- 3) Juvenile Justice so as to: (a) consider increasing the age of criminal responsibility; (b) broaden sentencing options under the Juvenile Act and include guiding principles more consistent with child protection objectives; (c) establish alternatives to judicial proceedings; (d) in Grenada, revise the Prisons Act to provide for separation of young prisoners from the adult inmates; and (e) in Guyana, revise the laws concerning "wandering children" to avoid criminalizing children seeking to escape abuse.
- 4) Access to Education through: (a) raising the compulsory school attendance age from eleven; (b) including reference to a medical condition as a discriminatory ground in the Education Act; (c) expressly prohibiting the exclusion of pregnant school age girls from schooling; and (d) removing the non-production of a birth certificate as a barrier to educational access.
- 5) Access to Health through provision of a legal age at which children can seek medical advice and treatment without parental consent.<sup>90</sup>

The notes observe that these recommendations must be placed in the context of ongoing regional initiatives that are also geared at reform in the relevant areas of the law, including the comprehensive regional initiative of the OECS Family Law Reform and Domestic Violence Project, which has been ongoing since 2002 and seeks to achieve model legislation for all nine OECS member states.<sup>91</sup>

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90. *Id.*

91. *Id.* Other initiatives mentioned include the UNIFEM Child Support Project, CARICOM's Pan Caribbean Partnership Against HIV/AIDS, and the World Bank-financed HIV/AIDS Prevention and Control Project in the Caribbean Countries, including Guyana, Grenada, St. Lucia, and St. Vincent & the Grenadines.

## V. Protecting Indigenous Peoples: Guyana Amerindian Act, No. 6 (2006)

In Guyana, the Amerindian Act Chapter 29:01 was repealed and replaced by the Amerindian Act, Act No. 6 (2006) (the Act). The newly adopted Act defines an Amerindian as any citizen of Guyana who belongs to, or is a descendant of, any of the native or aboriginal peoples of Guyana.<sup>92</sup> The Act provides "for the recognition and protection of the collective rights of Amerindian Villages and Amerindian Communities" through issuance of all existing title as communal title which is a legal requirement for all future settlements.<sup>93</sup> Significantly, the Act legislates the right of an Amerindian Village<sup>94</sup> or Amerindian Community<sup>95</sup> to self-define through the inclusion of a name or description of the native or indigenous people to which it belongs or a name of village, location, or traditional name or term that is of cultural or social significance.<sup>96</sup>

The Act confers the authority to administer the Amerindian Villages and Communities through their elected Village Councils<sup>97</sup> and Community Councils.<sup>98</sup> The Act also expressly protects traditional rights,<sup>99</sup> defined as "subsistence rights and privileges owned legally or by custom and exercised sustainably in accordance with the spiritual relationship which the community has with the land."<sup>100</sup> Part VI of the Act creates a procedure for settling land claims by an Amerindian community based on Amerindian customs and traditions. The two prerequisites for asserting a land claim to the relevant Minister are that the Amerindian community has been in existence for at least twenty-five years and is comprised of at least 150 persons at the time of application and during the five years immediately preceding.<sup>101</sup> The grant of title to an Amerindian Community effects its establishment as a Village.<sup>102</sup> There is a statutory right of challenge, which allows for review of the Minister's decision.<sup>103</sup>

The provisions of the Act allow Amerindian villages to exercise full ownership and control of their land and resources. Except for persons conducting official government business or authorized by law, the Act prohibits the entry on or the carrying out of research in Amerindian villages without permission of the Village Council.<sup>104</sup> Permission to enter Amerindian village lands may be subject to restrictions imposed by the Village Council.<sup>105</sup> In order to protect the cultural foundation of Amerindian land ownership, the Act prohibits the sale of Amerindian land.<sup>106</sup> No more than 10 percent of land can be leased at any one time by the Village Council, for a maximum term of fifty years, for use consistent with

92. See Amerindian Act, No. 6 (2006) (Laws of Guyana), § 2.

93. *Id.* § 63.

94. *Id.* § 2.

95. *Id.*

96. *Id.* § 3.

97. *Id.* § 10.

98. *Id.* §§ 86-87.

99. *Id.* § 57.

100. *Id.* § 2.

101. *Id.* § 60.

102. *Id.* § 63.

103. *Id.* § 84.

104. See *id.* § 5.

105. *Id.* § 7.

106. *Id.* § 44.

the cultural attachment of the land and in the best interests of the Village.<sup>107</sup> Legal recognition is given to the traditional Amerindian privilege to mine.<sup>108</sup> Mining activities can only be carried out on Village lands by non-Amerindian miners with the informed and prior consent of two-thirds of those eligible and voting at a Village general meeting,<sup>109</sup> subject to veto by the Minister with responsibility for mining, where consent is withheld with respect to large scale mining.<sup>110</sup> The Act stipulates the minimum conditions to be included in a mining agreement between Village and miner in order to protect the Village from any disadvantage in negotiations.<sup>111</sup> The guarantees, rights, and privileges conferred by the Act, including non-removal of Amerindians from their lands and noninterference by the State with their culture or way of life, are additional to those in the existing legal framework in Guyana, which are enjoyed by all citizens equally, including the Constitution of Guyana.

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107. *Id.* § 46.

108. *Id.* § 52.

109. *Id.* § 48.

110. *See id.* § 50.

111. *Id.* § 49.